

Neutral Citation No. - 2024:AHC-LKO:40955

Reserved on 13.05.2024

Delivered on 30.05.2024

Court No. - 27

Case :- APPLICATION U/S 482 No. - 7877 of 2019

Applicant :- Shweta Yadav And Ors.

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home And Ors.

Counsel for Applicant :- Mahmood Alam, Anurag
Tiwari, Gayasuddeen

Counsel for Opposite Party :- G.A., Arvind Kumar Jaiswal, Rajesh
Kumar Shukla, Sharad Kumar Vaish

Hon'ble Shamim Ahmed, J.

1. Heard Sri Mahmood Alam, learned counsel for the applicant as well as Sri Rajesh Kumar Shukla, learned counsel for the opposite party No.3 and Sri Ashok Kumar Singh, learned A.G.A. for the State-opposite party Nos. 1 and 2.

2. The present application under Section 482 Cr.P.C. has been filed with the following reliefs:

"1. Issue an order or direction for quashing the charge sheet no.1/2019, its order of cognizance, and the entire proceedings related to, Special Trail No. 157/2019, case crime no. 333/2018 Under Section 147,323,504,5061.P.C. read with section 3(1)(da), 3(1)(dha) SC/ST Act of Police Station Alambagh District Lucknow, pending in the Hon'ble Court of Special Judge SC/ST Act Lucknow,

2. Issue an order or directions for staying the proceedings of Special Trail No. 157/2019, case crime no. 333/2018 Under Section 147,323,504,5061.P.C. read with section 3(1)(da), 3(1)(dha) SC/ST Act of Police Station Alambagh District Lucknow, pending in

the Hon'ble Court of Special Judge SC/ST Act Lucknow, against the Applicant during pendency of this Application."

3. Learned counsel for the appellant submits that the First Information Report was lodged by opposite party No.3-Madhuri Devi Rawat which was registered as Case Crime No. 333/2018, under Section 395 I.P.C. read with Section 3 (1) (da), 3(1) (dha) SC/ST Act of Police Station Alambagh District Lucknow on 18.10.2018 alleging therein that the persons who are named in the F.I.R. committed dacoity in their house, who are residing on the same address as the complainant.
4. Learned counsel for the appellant further submits that during the course of investigation the investigating officer recorded the statement of Madhuri Devi Rawat and other prosecution witnesses namely Madhuri Devi Rawat, Avinash Rawat,, Arvind Kumar Rawat, Anamika @ Annu Rawat, Anshu @ Shalini Rawat, Preeti Rawat under Sections 161 Cr.P.C. and 164 Cr.P.C., and the allegation of the dacoity was found false and baseless and the Investigating Officer filed charge sheet under Section 147,323,504,506 IPC read with 3(1) (da). 3(1)(dha) SC ST Act.
5. Learned counsel for the appellant further submits that in the first information report not a single allegation regarding the derogation of any caste creed or religion had been uttered.
6. Learned counsel for the appellant further submits that the place of occurrence also does not corroborates with allegations alleged in the impugned first information report as well as with the statements of the prosecution witnesses recorded during the course of investigation.
7. Learned counsel for the appellant further submits that while pursuant to the allegation made in the impugned first information report, and revealed from the entire investigation conducted in the preferred case, not a single word has been excavated during the due

course of the investigation of the preferred case, which can be termed as derogatory or disgusting regarding any particular caste. Hence no offence under section 3(1)(da), 3(1)(dha) SC ST Act has not been made out against the applicants.

8. Learned counsel for the appellant further submits that the section 147 of the IPC deals with "Punishment for rioting" and states "Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

9. Learned counsel for the appellant further submits that similarly while pursuant of basic definition constrained in section 504 I.P.C which deal with Intentional insult with intent to provoke breach of the peace and says that "Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both." While pursuant to the allegation made in the impugned first information report, and revealed from the entire investigation conducted in the preferred case, not a single word has been excavated during the due course of the investigation of the preferred case, which can be termed as derogatory or disgusting for the complainant of the preferred case. Hence the offence under section 504 is not made out against the applicant.

10. Learned counsel for the appellant further submits that it is the specific case of the prosecution that there exists no sort of injury report of the so called injured of the case and hence it does not fulfills the basic ingredients of the section 323 I.P.C.

11. Learned counsel for the appellant further submits that there is nothing on record which can constitute an offence under section 506 IPC against the present applicants.

12. Learned counsel for the appellant further submits that in the matter of fact, a civil dispute regarding the passage is pending between the applicants and the opposite party no.3. The opposite party no.3 blocked the public passage of the applicants and installed a door with concrete constructions, which is being a matter of dispute between the opposite party no.3 and the other residents of the same area. When the applicants objected against such illegal act of the opposite parties no.3, then they were fraudulently roped under the provisions of the SC/ST Act just in the willingness to save their skin from the clutches of law.

13. Learned counsel for the appellant further submits that is nothing on record which can constitute an offence under SC /ST Act against the applicants. This is not the case of the prosecution that the present applicants insulted the opposite party no.3 with caste related derogations in a public view, which is a primary requirement to constitute an offence under section 3(1) SC/ST Act.

14. Learned counsel for the applicants has further submitted that the case lodged under Section 3(1) Da and 3(1) Dha of S.C./S.T. Act did not apply against the applicants because as per the version of the F.I.R. not a single allegation regarding the derogation of any caste creed or religion had been uttered and the alleged incident does not took place in the public view and public place. In support of his argument, learned counsel for the applicants has relied upon a judgment rendered by the Hon'ble Supreme Court in the case of **Hitesh Verma Vs. State of Uttarakhand, (2020) 10 SCC 710** and placed reliance upon para 13 and 18 of the aforesaid judgment, which are reproduced hereunder:-

"13. All insults or intimidations to a person will not be an offence under the Act unless such insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe. The object of the Act is to improve the socio-economic conditions of the

Scheduled Castes and the Scheduled Tribes as they are denied number of civil rights. Thus, an offence under the Act would be made out when a member of the vulnerable section of the Society is subjected to indignities, humiliations and harassment. The assertion of title over the land by either of the parties is not due to either the indignities, humiliations or harassment. Every citizen has a right to avail their remedies in accordance with law. Therefore, if the appellant or his family members have invoked jurisdiction of the civil court, or that respondent No.2 has invoked the jurisdiction of the civil court, then the parties are availing their remedies in accordance with the procedure established by law. Such action is not for the reason that respondent No.2 is member of Scheduled Caste.

18. Therefore, offence under the Act is not established merely on the fact that the informant is a member of Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste. In the present case, the parties are litigating over possession of the land. The allegation of hurling of abuses is against a person who claims title over the property. If such person happens to be a Scheduled Caste, the offence under Section 3(1)(r) of the Act is not made out."

Thus, learned counsel for the applicants submitted that in view of the judgment rendered by the Hon'ble Supreme

Court, no offence of S.C./S.T. Act are applicable even though offence under the provisions of I.P.C. are also not applicable. There was no occasion for the applicants to harass the opposite party no.2 or to use physical force on him. The order of cognizance passed by learned court below is not sustainable in the eyes of law, therefore, it may be quashed.

15. Learned counsel for the applicant further submits that without considering the material available on record and without knowing the correct facts of the case submitted the charge sheet in a mechanical manner whereupon the concerned Magistrate took cognizance in a routine manner against the applicants.

16. Learned A.G.A. opposed the prayer for quashing of the aforesaid cognizance order and submitted that prima facie offence is made out, however, he is unable to dispute the contentions raised by learned counsel for the applicants.

17. After considering the arguments advanced by learned counsel for the applicants and learned A.G.A.-1 and learned counsel for the opposite party No.3 and after perusal of the record, this Court is of the view the allegations made against the applicants under Sections 147, 323, 504, 506 IPC read with Sections 3(1)(da) and 3(1)(dha) of the SC/ST Act are not substantiated by the evidence on record.

18. It is further observed that the SC/ST Act, 1989 was enacted to improve the social economic conditions of the vulnerable sections of the society as they have been subjected to various offences such as indignities, humiliations and harassment. They have been deprived of life and property as well. The object of the Act, 1989 is thus to punish the violators who inflict indignities, humiliations and harassment and commit the offence as defined under Section 3 of the SC/ST Act, 1989. The SC/ST Act, 1989 thus intended to punish the acts of the upper caste against the vulnerable section of the society for the reason that they belong to a particular community. Section 3(1)(Dha) of the SC/ST Act, 1989 or 3(1)(s) of the SC/ST Act, 1989 would read as under:-

"Section 3(1)(s) of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989- abuses any member of a Scheduled Caste or a Schedule Tribe by caste name in any place within the public view"

Thus, the basic ingredient of the offence under Section 3(1) (da) (Dha) can be clarified as abuse of any member of Schedule Caste or a Schedule Tribe by caste name in any place within the public view.

19. It is further observed that an offence under the SC/ST Act, 1989 would be made out when a member of the vulnerable section of the society is subjected to indignities, humiliations and harassment in any place within the public view.

20. It is further observed by this Court that before an accused is subjected to trial for commission of offence under Section 3(1) (da) (Dha) of the SC/ST Act, 1989 the utterances made by him in any "place within a public view" is mandatory and from the bare perusal of the F.I.R., the utterances, if any, as mentioned in Section 3(1) (da) (Dha) are not fulfilled. The Investigating agencies while investigating

the matter are duty bound to consider the factual aspects of the matter and also to consider the statement of witnesses, complainant as well as the applicants so as to ascertain whether the chargesheet makes out a case under the SC/ST Act, 1989 having been committed for forming a proper opinion in the conspectus of the situation before it, prior to taking cognizance of the offence by learned Magistrate. In the present case from the factual aspects and contents of the F.I.R. discussed above, no offence is made out under Section 3(1) (da) (Dha) of the SC/ST Act, 1989. Though, the learned Magistrate has not applied its judicial mind while taking cognizance in the matter and even though, he has only relied on the contents of the charge sheet and summoned the applicants by impugned order to face trial, which is very serious matter.

21. In view of the aforesaid discussion, this Court deems it proper to discuss some case laws.

Hon'ble Supreme Court in the case of **Hitesh Verma Vs. State of Uttarakhand, (2020) 10 SCC 710** has been pleased to observe in para 13, 14 and 18 as under :-

"13. All insults or intimidations to a person will not be an offence under the Act unless such insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe. The object of the Act is to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes as they are denied number of civil rights. Thus, an offence under the Act would be made out when a member of the vulnerable section of the Society is subjected to indignities, humiliations and harassment. The assertion of title over the land by either of the parties is not due to either the indignities, humiliations or harassment.

Every citizen has a right to avail their remedies in accordance with law. Therefore, if the appellant or his family members have invoked jurisdiction of the civil court, or that respondent No.2 has invoked the jurisdiction of the civil court, then the parties are availing their remedies in accordance with the procedure established by law. Such action is not for the reason that respondent No.2 is member of Scheduled Caste.

*14. Another key ingredient of the provision is insult or intimidation in "any place within public view". What is to be regarded as "place in public view" had come up for consideration before this Court in the judgment reported as **Swaran Singh v. State** [**Swaran Singh v. State, (2008) 8 SCC 435 : (2008) 3 SCC (Cri) 527**]. The Court had drawn distinction between the expression "public place" and "in any place within public view". It was held that if an offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, then the lawn would certainly be a place within the public view. On the contrary, if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then it would not be an offence since it is not in the public view (sic) . The Court held as under :*

"18. It has been alleged in the FIR that Vinod Nagar, the first informant, was insulted by Appellants 2 and 3 (by calling him a "chamar") when he stood near the car which was parked at the gate of the premises. In our opinion, this was certainly a place within public

view, since the gate of a house is certainly a place within public view. It could have been a different matter had the alleged offence been committed inside a building, and also was not in the public view. However, if the offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, the lawn would certainly be a place within the public view. Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view. We must, therefore, not confuse the expression "place within public view" with the expression "public place". A place can be a private place but yet within the public view. On the other hand, a public place would ordinarily mean a place which is owned or leased by the Government or the municipality (or other local body) or gaon sabha or an instrumentality of the State, and not by private persons or private bodies."

Therefore, offence under the Act is not established merely on the fact that the informant is a member of Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste. In the present case, the parties are litigating over possession of the land. The allegation of hurling of abuses is against a person who claims title over the property. If such person happens to be a Scheduled Caste, the offence under Section 3(1)(r) of the Act is not made out."

22. Further, the Hon'ble Apex Court in the case of **Ramesh Chandra Vaishya Vs. State of U.P. and Another; (2023) SCC OnLine SC 668** has been pleased to observe in paragraph 17, 18 and 21 as under:-

"17. The first question that calls for an answer is whether it was at a place within public view that the appellant hurled caste related abuses at the complainant with an intent to insult or intimidate with an intent to humiliate him. From the charge-sheet dated 21st January, 2016 filed by the I.O., it appears that the prosecution would seek to rely on the evidence of three witnesses to drive home the charge against the appellant of committing offences under sections 323 and 504, IPC and 3(1)(x), SC/ST Act. These three witnesses are none other than the complainant, his wife and their son. Neither the first F.I.R. nor the charge-sheet refers to the presence of a fifth individual (a member of the public) at the place of occurrence (apart from the appellant, the complainant, his wife and their son). Since the utterances, if any, made by the appellant were not "in any place within public view", the basic ingredient for attracting section 3(1)(x) of the SC/ST Act was missing/absent. We, therefore, hold that at the relevant point of time of the incident (of hurling of caste related abuse at the complainant by the appellant), no member of the public was present.

"18. That apart, assuming that the appellant had hurled caste related abuses at the complainant with a view to insult or humiliate him, the same does not advance the case of the complainant any further to bring it within the ambit of section 3(1)(x) of the

SC/ST Act. We have noted from the first F.I.R. as well as the charge-sheet that the same makes no reference to the utterances of the appellant during the course of verbal altercation or to the caste to which the complainant belonged, except for the allegation/observation that caste-related abuses were hurled. The legislative intent seems to be clear that every insult or intimidation for humiliation to a person would not amount to an offence under section 3(1)(x) of the SC/ST Act unless, of course, such insult or intimidation is targeted at the victim because of he being a member of a particular Scheduled Caste or Tribe. If one calls another an idiot (bewaqoof) or a fool (murkh) or a thief (chor) in any place within public view, this would obviously constitute an act intended to insult or humiliate by user of abusive or offensive language. Even if the same be directed generally to a person, who happens to be a Scheduled Caste or Tribe, per se, it may not be sufficient to attract section 3(1)(x) unless such words are laced with casteist remarks. Since section 18 of the SC/ST Act bars invocation of the court's jurisdiction under section 438, Cr.PC and having regard to the overriding effect of the SC/ST Act over other laws, it is desirable that before an accused is subjected to a trial for alleged commission of offence under section 3(1)(x), the utterances made by him in any place within public view are outlined, if not in the F.I.R. (which is not required to be an encyclopedia of all facts and events), but at least in the charge-sheet (which is prepared based either on statements of witnesses recorded in course of investigation or otherwise) so as to enable the court to ascertain whether the charge

sheet makes out a case of an offence under the SC/ST Act having been committed for forming a proper opinion in the conspectus of the situation before it, prior to taking cognizance of the offence. Even for the limited test that has to be applied in a case of the present nature, the charge-sheet dated 21 st January, 2016 does not make out any case of an offence having been committed by the appellant under section 3(1)(x) warranting him to stand a trial.

"21. Section 323, IPC prescribes punishment for voluntarily causing hurt. Hurt is defined in section 319, IPC as causing bodily pain, disease or infirmity to any person. The allegation in the first F.I.R. is that the appellant had beaten up the complainant for which he sustained multiple injuries. Although the complainant alleged that such incident was witnessed by many persons and that he sustained injuries on his hand, the charge-sheet does neither refer to any eye-witness other than the complainant's wife and son nor to any medical report. The nature of hurt suffered by the complainant in the process is neither reflected from the first F.I.R. nor the charge-sheet. On the contrary, the appellant had the injuries suffered by him treated immediately after the incident. In the counter-affidavit filed by the first respondent (State) in the present proceeding, there is no material worthy of consideration in this behalf except a bald statement that the complainant sustained multiple injuries "in his hand and other body parts". If indeed the complainant's version were to be believed, the I.O. ought to have asked for a medical report to support the same. Completion of investigation within a day in

a given case could be appreciated but in the present case it has resulted in more disservice than service to the cause of justice. The situation becomes all the more glaring when in course of this proceeding the parties including the first respondent are unable to apprise us the outcome of the second F.I.R. In any event, we do not find any ring of truth in the prosecution case to allow the proceedings to continue vis-à-vis section 323, IPC."

23. Further, the Hon'ble Supreme Court in the case of **Fakhruddin Ahmad Vs State of Uttranchal** and another reported in (2008) 17 SCC 157, discussed the expression "taking cognizance of an offence" by a Magistrate within contemplation of section 190 of the Cr.P.C and also discussed what must have been taken notice by the Magistrate while taking cognizance. Paras 11, 12, 13,14 and15 being relevant are abstracted below:-

"11.The next incidental question is as to what is meant by expression 'taking cognizance of an offence' by a Magistrate within the contemplation of Section 190 of the Code?

*12.The expression 'cognizance' is not defined in the Code but is a word of indefinite import. As observed by this Court in **Ajit Kumar Palit Vs. State of West Bengal**, the word 'cognizance' has no esoteric or mystic significance in criminal law or procedure. It merely means--become aware of and when used with reference to a Court or Judge, to take notice of judicially. Approving the observations of the Calcutta High Court in **Emperor Vs. Sourindra Mohan Chuckerbutty**, the Court said that 'taking cognizance*

does not involve any formal action; or indeed action of any kind, but occurs as soon as a Magistrate, as such, applies his mind to the suspected commission of an offence.'

13. Recently, this Court in **S.K. Sinha, Chief Enforcement Officer Vs. Videocon International Ltd. & Ors.**, speaking through C.K. Thakker, J., while considering the ambit and scope of the phrase 'taking cognizance' under Section 190 of the Code, has highlighted some of the observations of the Calcutta High Court in **Superintendent & Remembrancer of Legal Affairs, West Bengal Vs. Abani Kumar Banerjee**, which were approved by this Court in **R. R. Chari Vs. State of U.P.** The observations are:

3 (1910) I.L.R. 37 Calcutta 412 4 (2008) 2 SCC 492 5 A.I.R. (37) 1950 Calcutta 437 6 A.I.R. (38) 1951 SC 207 1 0 "7. ... What is 'taking cognizance' has not been defined in the Criminal Procedure Code, and I have no desire now to attempt to define it. It seems to me clear, however, that before it can be said that any Magistrate has taken cognizance of any offence under Section 190(1)(a) CrPC, he must not only have applied his mind to the contents of the petition, but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter, proceeding under Section 200, and thereafter sending it for enquiry and report under Section 202. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind, e.g., ordering investigation under Section 156 (3), or issuing a search warrant for

the purpose of the investigation, he cannot be said to have taken cognizance of the offence."

"14. From the afore-noted judicial pronouncements, it is clear that being an expression of indefinite import, it is neither practicable nor desirable to precisely define as to what is meant by 'taking cognizance'. Whether the Magistrate has or has not taken cognizance of the offence will depend upon the circumstances of the particular case, including the mode in which the case is sought to be instituted and the nature of the preliminary action.

"15. Nevertheless, it is well settled that before a Magistrate can be said to have taken cognizance of an offence, it is imperative that he must have taken notice of the accusations and applied his mind to the allegations made in the complaint or in the police report or the information received from a source other than a police report, as the case may be, and the material filed therewith. It needs little emphasis that it is only when the Magistrate applies his mind and is satisfied that the allegations, if proved, would constitute an offence and decides to initiate proceedings against the alleged offender, that it can be positively stated that he has taken cognizance of the offence."

24. This Court in the matter of **Ankit Vs State of U.P. and another** reported in JIC 2010 (1) page 432 has held that-

*"Although as held by this Court in the case of **Megh Nath Guptas & Anr V State of U.P. And Anr, 2008** (62) ACC 826, in which reference has been made to*

the cases of Deputy Chief Controller Import and Export Vs Roshan Lal Agarwal, 2003 (4[^]) ACC 686 (SC), UP Pollution Control Board Vs Mohan Meakins, 2000 (2) JIC 159 (SC): AIR 2000 SC 1456 and Kanti Bhadra Vs State of West Bengal, 2000 (1) JIC 751 (SC): 2000 (40) ACC 441 (SC), the Magistrate is not required to pass detailed reasoned order at the time of taking cognizance on the charge sheet, but it does not mean that order of taking cognizance can be passed by filling up the blanks on printed proforma. At the time of passing any judicial order including the order taking cognizance on the charge sheet, the Court is required to apply judicial mind and even the order of taking cognizance cannot be passed in mechanical manner. Therefore, the impugned order is liable to be quashed and the matter has to be sent back to the Court below for passing fresh order on the charge sheet after applying judicial mind."

25. Hon'ble the Supreme Court of India in the case of ***Lalankumar Singh and Others vs. State of Maharashtra*** reported in **2022 SCC Online SC 1383** has specifically held in paragraph No.38 that the order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. **Paragraph No.38 of Lalankumar Singh and Others (supra) is being quoted hereunder:-**

"38. The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in

the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused. No doubt, that the order need not contain detailed reasons. A reference in this respect could be made to the judgment of this Court in the case of Sunil Bharti Mittal v. Central Bureau of Investigation, which reads thus:

“51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely because a

complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

53. However, the words “sufficient ground for proceeding” appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect.”

26. Further, Hon’ble the Supreme Court of India has provided guidelines in case of **State of Haryana Vs. Bhajan Lal** reported in **1992 Supp (1) SCC 335** for the exercise of power under Section 482 Cr.P.C. which is extraordinary power and used separately in following conditions:-

"102.(1) Where the allegations made in the first information report or the complaint, even if they are

taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused."

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/

or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

27. Further the Apex Court has also laid down the guidelines where the criminal proceedings could be interfered and quashed in exercise of its power by the High Court in the following cases:- **(i) *R.P. Kapoor Vs. State of Punjab*, AIR 1960 S.C. 866, (ii) *State of Bihar Vs. P.P. Sharma*, 1992 SCC (Cri.)192, (iii) *Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another*, (Para-10) 2005 SCC (Cri.) 283 and (iv) *Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra*, AIR 2021 SC 1918.**

28. In ***S.W. Palankattkar & others Vs. State of Bihar*, 2002 (44) ACC 168**, it has been held by the Hon'ble Apex Court that quashing of the criminal proceedings is an exception than a rule. The inherent powers of the High Court itself envisages three circumstances under which the inherent jurisdiction may be exercised:- (i) to give effect an order under the Code, (ii) to prevent abuse of the process of the court ; (iii) to otherwise secure the ends of justice. The power of High Court is very wide but should be exercised very cautiously to do real and substantial justice for which the court alone exists.

29. In ***M/s Pepsi Food Ltd. and another Vs. Special Judicial Magistrate and others*: 1998 UPCR 118**, Hon'ble Apex Court has observed:

“Summoning of an accused in a criminal case, is a serious matter. Criminal law can not be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning the accused. Magistrate had to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

30. In **Paul George Versus State 2002(1) JIC 626 (SC) 2002 Cri,L.J. 996**, Hon’ble Apex Court has observed:

“We feel that whatever be the outcome of the pleas raised by the appellant on merit, the order disposing of the matter must indicate application of mind to the case and some reasons be assigned for negating or accepting such pleas....

It is true that it may depend upon the nature of the matter which is being dealt with by the Court and the nature of the jurisdiction being exercised as to in what manner the reasons may be recorded e.g. in an order of affirmance detailed reasons or discussion may not be necessary but some brief indication by the application of mind may be traceable to affirm and order would certainly be required. Mere ritual of repeating the words or language used in the provisions, saying that no illegality, impropriety or jurisdictional error

is found in the judgment under challenge without even a whisper of the merits of the matter or nature of pleas raised does not meet the requirement of decision of a case judicially.”

31. Similarly, in **Dinesh Kumar Gupta Versus State of U.P. and another: 2013(1) JIC 795 (All)**, It has been held that where Magistrate takes cognizance of submission of charge-sheet without mentioning in the order that he perused the charge-sheet and other material thereof, the cognizance is bad in eye of law. The relevant portion of the judgment dealing with above point may be extracted as below:

“A perusal of the aforesaid order reveals that the learned Magistrate has nowhere mentioned in the order that he has perused the charge-sheet and material filed in support thereof nor he disclosed the fact that the materials were sufficient to proceed with the case. The manner in which the learned Magistrate has passed the order impugned cannot be said that he had applied his mind to the facts contained in the charge-sheet and other materials filed in support thereof. Therefore, the aforesaid order cannot be described as an order “taking of cognizance of the offences” disclosed in the charge-sheet against the petitioner, hence the order dated 3-10-2012 cannot be sustained.”

32. In the instant case, there is nothing in the cognizance order to show that the Magistrate concerned perused the material available on record before taking cognizance. Hence it is clear that the Magistrate did not apply his mind before taking cognizance. Hence the cognizance is bad in eye of law and resultantly it is not sustainable.

33. Upon careful consideration of the facts and circumstances presented in this case, and after reviewing the submissions of both the learned counsel for the appellants and the learned A.G.A-I for the State, it is evident that the allegations made against the applicants under Sections 147, 323, 504, 506 IPC read with Sections 3(1)(da) and 3(1)(dha) of the SC/ST Act are not substantiated by the evidence on record.

34. The First Information Report (FIR) lodged by the opposite party No.3 alleged that the applicants committed dacoity and other offenses. However, the investigation found the dacoity allegation to be false, leading to the filing of the charge sheet under lesser offenses. Statements recorded under Section 161 Cr.P.C. from various witnesses, including Madhri Devi Rawat and others, do not corroborate the allegations of caste-based derogation or any serious offenses under the SC/ST Act.

35. Sections 3(1)(da) and 3(1)(dha) of the SC/ST Act pertain to intentionally insulting or intimidating with the intent to humiliate a member of a Scheduled Caste or Scheduled Tribe in any place within public view.

The FIR and subsequent investigation do not reveal any specific derogatory remarks or actions targeting the complainant's caste. The allegations appear to be based on a personal dispute rather than any caste-based discrimination.

The absence of any caste-related derogatory remarks or public humiliation means that the essential ingredients required to invoke Sections 3(1)(da) and 3(1)(dha) of the SC/ST Act are not present.

Explanation of SC/ST Act Invocation: The SC/ST Act is designed to protect members of Scheduled Castes and Scheduled Tribes from atrocities and discrimination. It is invoked when:

There is intentional insult or intimidation with intent to humiliate a member of a SC/ST in any place within public view.

There are acts of violence, social and economic boycott, or other forms of discrimination targeted specifically at members of SC/ST communities.

In this case, the absence of specific derogatory remarks or actions targeting the complainant's caste and the lack of public humiliation means the SC/ST Act provisions are not applicable. The personal nature of the dispute and the insufficient evidence to prove the alleged offenses justify the quashing of the proceedings.

36. The charges under Sections 147, 323, 504, and 506 IPC are not supported by any concrete evidence. The alleged injuries were simple and do not fulfill the criteria for Sections 323 and 506 IPC. Moreover, no elements of intentional insult or provocation to breach the peace were substantiated to invoke Section 504 IPC. The offence under Section 147 IPC, related to rioting, also lacks sufficient evidence of any unlawful assembly or rioting by the applicants.

37. It is noted that there exists a civil dispute regarding a passage between the applicants and the opposite party no. 3. The allegations appear to be a result of this ongoing civil dispute, and it seems that the provisions of the SC/ST Act have been misused to pressurize the applicants.

38. The Hon'ble Supreme Court in **Swarn Singh Vs State through Standing Counsel and Anr. (2008 Vol 3 J.I.C. Page 391 supra)** has held that mere utterance of abuses without a specific derogatory reference to caste does not constitute an offence under the SC/ST Act.

39. The investigation and the evidence on record do not support the charges brought against the applicants under Sections 147, 323, 504, 506 IPC read with Sections 3(1)(da) and 3(1)(dha) SC/ST Act. The initiation of the proceedings appears to be based on a personal vendetta rather than any actionable offense under the SC/ST Act or IPC. Therefore, the proceedings are deemed an abuse of the legal process and are liable to be quashed.

40. Thus, in view of the law laid down by the Hon'ble Apex Court and the facts and circumstances, as narrated above and also with the assistance of the aforesaid guidelines and keeping in view the nature and gravity and the severity of the offence which more particularly is a private dispute and differences, it deems proper and meet to the ends of justice that the proceeding of the aforementioned case be quashed.

41. In the result, the application deserves to be allowed and therefore, the application under Section 482 Cr.P.C. filed by the applicants is **allowed** and the charge sheet no.1/2019, its order of cognizance, and the entire proceedings related to, Special Trail No. 157/2019, case crime no. 333/2018 Under Section 147,323,504,5061.P.C. read with section 3(1)(da), 3(1)(dha) SC/ST Act of Police Station Alambagh District Lucknow, pending in the Court of Special Judge SC/ST Act Lucknow is hereby **quashed**.

42. Office is directed to transmit a copy of this order to the learned trial court concerned immediately.

Order Date :- 30.05.2024

Arvind

(Shamim Ahmed, J.)